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Supreme Court, U.S.
FILED
FEB 21 1985
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

1984 TERM

No. 84-1181

NEW YORK,

Petitioner,

-against-

BENIGNO CLASS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the decision of the New York Court of Appeals which, by the court's express statement, was predicated on the State Constitution as well as the Federal Constitution, and which cited a long line of the court's prior search and seizure rulings, was based on adequate and independent state grounds, and this Court therefore lacks jurisdiction.

2. Whether this Court should deny the petition because, under the extreme facts of this case, the New York Court of Appeals correctly held that a police officer is not entitled, after stopping a motorist for a routine traffic infraction, to open up the car to inspect the vehicle identification number where the officer does not suspect, and lacks any reason to believe, that the car is stolen.

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BRIEF IN OPPOSITION TO

PETITION FOR CERTIORARI

Respondent requests that this Court deny the petition for a writ of certiorari to review the judgment the New York Court of Appeals entered in the instant case on November 27, 1984. **People v. Class**, 63 N.Y.2d 491, ___ N.E.2d ___ (1984).

JURISDICTION

Petitioner asserts this Court has jurisdiction under 28 U.S.C. §1257(3). Respondent maintains that this Court lacks jurisdiction because the decision of the New York Court of Appeals was based on adequate and independent state grounds.

CONSTITUTIONAL PROVISIONS INVOLVED

The New York Constitution, Article I, Section 12, provides, in relevant part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The United States Constitution, Amendment IV, provides:

> The right of the People to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Respondent accepts the factual statement set forth in the Petition.

REASONS FOR DENYING THE WRIT

POINT I

THE DECISION OF THE NEW YORK COURT OF APPEALS WHICH, BY THE COURT'S EXPRESS STATEMENT, WAS PREDICATED ON THE STATE CONSTITUTION AS WELL AS THE FEDERAL CONSTITUTION, AND WHICH CITED A LONG LINE OF THE COURT'S PRIOR SEARCH AND SEIZURE RULINGS, WAS BASED ON ADEQUATE AND INDEPENDENT STATE GROUNDS, AND THIS COURT THEREFORE LACKS JURISDICTION.

The New York Court of Appeals held that Police Officer McNamee violated Respondent's right to be free from unreasonable searches and seizures when, lacking any reason to believe the vehicle was stolen, he opened Respondent's car and disturbed some papers on the dashboard in an effort to examine the vehicle identification number [VIN] (See Petition, at 1a-6a). The decision was founded expressly on Article I, Section 12, of the New York Constitution, as well as the Fourth Amendment to the United States Constitution. In addition to explicit reliance upon the State Constitution, the court made it clear that its decision flowed from its own prior rulings in a host of cases: **People v. David L.**, 56 N.Y.2d 698, 436 N.E.2d 1324, **cert. denied**, 459 U.S. 866 (1982); **People v. Miller**, 43 N.Y.2d 789, 373 N.E.2d 286 (1977), **aff'g**, 52 A.D.2d 425 (1st Dept. 1976); **People v. Perel**, 34 N.Y.2d 462, 315 N.E.2d 452 (1974); **People v. Cruz**, 34 N.Y.2d 362, 314 N.E.2d 39

(1974); **People v. Sullivan**, 29 N.Y.2d 69, 272 N.E.2d 464 (1971), and **People v. Marsh**, 20 N.Y.2d 98, 228 N.E.2d 783 (1967). Under this Court's precedents, the decision of the New York Court of Appeals rested on an adequate, independent state ground precluding review by this Court.

In **Herb v. Pitcairn**, 324 U.S. 113, 125-126 (1945), this Court wrote that limitations on its jurisdiction and the rule against advisory opinions bar it from reviewing judgments of state courts that rest on adequate and independent state grounds. In order "scrupulously to observe the long standing rule [against reviewing] a judgment of a state court that rests on an adequate and independent ground in state law," the Court held it could not decide the case unless the state court indicated that its decision was mandated by federal law. **Id.** at 128.

In **Michigan v. Long**, ___ U.S. ___, 77 L.Ed.2d 1201, 1216 (1983), this Court held that a state court decision which "relied **exclusively** on [federal caselaw]" in support of the result was not based on adequate and independent state grounds (emphasis in original). Indeed, an inspection of the decision of the Michigan Supreme Court in **People v. Long**, 413 Mich. 461, 320 N.W.2d 866 (1982), reveals that the result turned entirely on the state court's analysis of this Court's holding in **Terry v. Ohio**, 392 U.S. 1 (1968).

The New York Court of Appeals, which has a long tradition of interpreting the State Constitution in favor of the public's right to be free from unreasonable searches and seizures,[1] relied on numerous decisions of its own in support of its holding that a police officer may not, absent any reason to suspect that a car is stolen, open up the door and disturb papers on the dashboard in an effort to inspect the vehicle identification number. Therefore, on its face, the decision of the New York Court of Appeals was based on adequate and independent state grounds.

Examination of the cases cited by the Court of Appeals confirms that its decision in the instant case was based on adequate and independent state grounds. The court's prior decisions in **People v. David L**, supra, 56 N.Y.2d 698, **People v. Miller**, supra, 43 N.Y.2d 789, **People v. Perel**, supra, 34 N.Y.2d 462, and **People v. Cruz**, supra, 34 N.Y.2d 362, were all based on

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1. In **People v. Elwell**, 50 N.Y.2d 231, 241, 406 N.E.2d 471, 477 (1980), the New York Court of Appeals held that the New York Constitution goes beyond this Court's holdings in **Spinelli v. United States**, 393 U.S. 410 (1969), and **Draper v. United States**, 358 U.S. 307 (1959), as to the corroboration required in order to sustain a warrantless search or arrest based on an informant's tip. Likewise, in **People v. Belton**, 55 N.Y.2d 49, 51, 432 N.E.2d 745, 746 (1982), the Court of Appeals interpreted the New York Constitution in a manner differently than this Court had interpreted the Fourth Amendment in the area of vehicle searches. For other decisions holding that the New York Constitution provides broader protection against unreasonable searches and seizures, **See People v. Gokey**, 60 N.Y.2d 309, 312, 457 N.E.2d 723, 724 (1983) and **People v. Smith**, 59 N.Y.2d 454, 457-459, 452 N.E.2d 1224, 1227 (1983).

New York law. The court's reliance on New York law in **People v. Marsh, supra**, 20 N.Y.2d 98, cannot be doubted. In that case, the Court of Appeals held that relevant New York statutes failed to authorize the police to conduct a search whenever they stop a motorist for a traffic infraction. **Id.** at 100-101. The court also held that the New York and United States Constitutions mandated the same rule. **Id.** at 102. In the instant case, the Court of Appeals cited **People v. Marsh** to support its holding that a police officer, upon stopping a motorist for a routine traffic infraction, is not entitled to open up a car or disturb papers on the dashboard in an effort to inspect the vehicle identification number, where the officer lacks any reason to believe that the car is stolen (see Petition, at 5a). It is noteworthy that even the dissenters in this case acknowledge that the New York Court of Appeals has carved out its own "expectation of privacy" jurisprudence alongside that articulated by this Court (see Petition, at 7a).

The mere fact that Article I, Section 12, of the New York Constitution contains the same language as the Fourth Amendment in no way prevents the New York provision from being interpreted to provide greater protection to the public's right to be free from unreasonable searches and seizures than would the Federal Constitution. **Sibron v. New York**, 392 U.S. 40, 60-61

(1968); **People v. Belton, supra**, 55 N.Y.2d at 51, 432 N.E.2d at 746.

In a case where, as here, the decision sought to be reviewed rests on both state and federal grounds, either of which would have been dispositive, this Court lacks jurisdiction. **Zacchini v. Scripps-Howard Broadcasting Co.**, 433 U.S. 562, 568 (1977). The Petition should therefore be denied.

POINT II

THIS COURT SHOULD DENY THE PETITION BECAUSE, UNDER THE EXTREME FACTS OF THIS CASE, THE NEW YORK COURT OF APPEALS CORRECTLY HELD THAT A POLICE OFFICER IS NOT ENTITLED, AFTER STOPPING A MOTORIST FOR A ROUTINE TRAFFIC INFRACTION, TO OPEN UP THE CAR TO INSPECT THE VEHICLE IDENTIFICATION NUMBER WHERE THE OFFICER DOES NOT SUSPECT, AND LACKS ANY REASON TO BELIEVE, THAT THE CAR IS STOLEN.

A police officer is not entitled to conduct a search whenever he stops a motorist for a routine traffic infraction. In order to conduct a warrantless, search, rather, the police must have reasonable grounds, apart from the traffic violation itself, to believe that the motorist is guilty of a crime. **Dyke v. Taylor Implement Co.**, 391 U.S. 216, 221 (1968).

The officer who entered Respondent's car to examine the vehicle identification number was so patently lacking in legal justification that his conduct amounted to an egregious violation of Respondent's right to be free from unreasonable searches and seizures. Unlike the situation in nearly every other reported case

involving the legality of VIN inspections, Officer McNamee's conduct was not supported by the slightest suggestion that Respondent's car was stolen.

No court, in any American jurisdiction, has ever expressly held that a police officer has the right, upon stopping a motorist for a routine traffic infraction, to open up the car in order to inspect the vehicle identification number where the officer does not suspect, and lacks any reason to believe, that the car is stolen. Where, as in the instant case, a police officer, lacking any reason to believe the car is stolen, opens up the car in order to inspect its vehicle identification number, the officer violates the motorist's right to be free from unreasonable searches and seizures. **See State v. Moore**, 659 P.2d 70 (Hawaii 1983); **People v. Piper**, 101 Ill.App.3d 296, 427 N.E.2d 1361 (1981); **State v. Simpson**, 95 Wash.2d 170, 622 P.2d 1199 (1980). Vehicle identification number inspections have also been held unlawful in **United States v. Nikrash**, 367 F.2d 740, 743 (7th Cir. 1966); **Simpson v. United States**, 346 F.2d 291, 294 (10th Cir. 1965); and **State v. McGann**, 467 A.2d 571 (N.H. 1983). The only case that in any way supports the position urged by Petitioner is **State v. Sedacca**, 252 Md. 207, 249 A.2d 456, 457 (1969), but that decision did not closely analyze the precise issue presented by the instant case.

The cases relied on by Petitioner (Petition, at 9) provide no support for the proposition that a police officer, lacking any reason to believe a car is stolen, is entitled to open it in order to view its vehicle identification number. Every case Petitioner cites involves a situation where the circumstances give rise to a reasonable belief that the vehicle was stolen: **United States v. Powless**, 546 F.2d 792 (8th Cir.), **cert. denied**, 430 U.S. 910 (1977); **United States v. Ware**, 457 F.2d 828, **cert. denied**, 409 U.S. 888 (1972); **United States v. Zemke**, 457 F.2d 110 (7th Cir.), **cert. denied**, 406 U.S. 947 (1972); **United States v. Squires**, 456 F.2d 967 (2d Cir. 1972); **United States v. Johnson**, 431 F.2d 441 (5th Cir. 1970); **United States v. Graham**, 391 F.2d 439 (6th Cir.), **cert. denied**, 393 U.S. 941 (1968); **Cotton v. United States**, 371 F.2d 385 (9th Cir. 1967); **People v. Wolf**, 60 Ill.2d 230, 326 N.E.2d 766, **cert. denied**, 423 U.S. 946 (1975); **Commonwealth v. Mason**, 387 Mass. 169, 439 N.E.2d 251 (1982); **People v. Brooks**, 405 Mich. 225, 274 N.W.2d 430 (1979); and **Shirley v. Commonwealth**, 218 Va. 49, 235 S.E.2d 432 (1977).

Because the record in the instant case is devoid of any suggestion that Respondent's car was stolen, this case is unrepresentative of the VIN cases that have arisen elsewhere. The instant case would, therefore, be a poor vehicle for this Court to address the broad issues Petitioner seeks to raise herein (see

Petition, at 5-6).

Petitioner states that many cars are stolen in New York (Petition, at 7). Requiring a police officer to have a basis for suspecting that a particular car is stolen before he can open it up and inspect its vehicle identification number, however, in no way increases the risk that large numbers of stolen vehicles will evade detection. In a situation where, unlike the instant case, a police officer has reason to believe a vehicle is stolen, the decision of the New York Court of Appeals creates no barrier to examination of its vehicle identification number.

A decision that a police officer has the right, lacking any basis to believe that a car is stolen, to open a car to inspect its vehicle identification number, would seriously undermine the public's right to be free from unreasonable searches and seizures. The decision of the New York Court of Appeals should not be disturbed.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

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Attorney for Respondent

MARK C. COGAN
Of Counsel
February, 1985

PROOF OF SERVICE -- CERTIFICATE
BY A BAR MEMBER

I, WILLIAM E. HELLERSTEIN, the attorney for Benigno Class, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 21st day of February, 1985, I served the foregoing Brief in Opposition on the opposing party thereto, as follows:

On Counsel for Petitioner, by mailing a copy in a duly addressed envelope, with postage prepaid, to Mario Merola, District Attorney, 215 East 161st Street, Bronx, New York 10451.

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